THE HON'BLE SRI JUSTICE DAMA SESHADRI NAIDU

WRIT PETITION No.18284 of 2006

ORDER:

This is the writ petition filed by the petitioner workman assailing the award dated 01.09.2005 of the first respondent Labour Court in I.D.No.128 of 2002, whereby and whereunder, it returned a 'Nil' award holding that the industrial dispute raised by the petitioner was premature, inasmuch as there was no termination of his services by the second respondent company at the time of his approaching the first respondent Labour Court.

The facts, in brief, are that the petitioner joined the second respondent company on 01.01.1996 as a Technician and was subsequently promoted as Supervisor in the year 2000. In course of time, owing to his ill-health in 2001, when the petitioner applied for leave, it was not granted. Despite the same, he had to go on leave. In fact, the second respondent company is said to have advised the petitioner to seek proper medical advice from one Dr. Ravi Kant. Acting on the said advice, on 19.11.2001 the petitioner underwent a medical check up by the said Doctor, who advised him to consult an Orthopaedist. Accordingly, the petitioner consulted an Orthopaedist, who treated him, took treatment, and also obtained a fitness certificate. Later, on 08.05.2002, armed with the fitness certificate, the petitioner approached the second respondent company reporting for duties on 08.05.2002, yet the management refused to take him back to duty. When the management persisted with its refusal, the petitioner was constrained to issue a legal notice on 12.06.2002. The petitioner followed up the said legal notice by submitting a letter dated 04.07.2002 explaining the reasons for his absence.

It appears that the second respondent company issued a reply-cum-show cause notice on 22.06.2002 requiring the petitioner to explain within 48 hours why his services should not be terminated.

Under those circumstances, treating the refusal of the management to permit him to discharge his duties as an oral termination, the petitioner raised an industrial dispute in I.D.No.128 of 2002 before the first respondent Labour Court. Eventually, the said ID resulted in a nil award. The Labour Court has held that the petitioner's raising the industrial dispute was premature, since there had been no termination of services by the time he approached it. Accordingly, the industrial dispute stood dismissed. Aggrieved thereby, the petitioner filed the present writ petition questioning the 'nil' award of the first respondent Labour Court. Before proceeding further to appreciate the rival contentions of the respective parties, it is pertinent to mention that, pending the adjudication of the ID, the respondent management is said to have passed orders of termination at a later point of time, but the same remained unassailed.

Sri P. Sri Raghuram, the learned Senior Counsel appearing for the petitioner, has submitted that the second respondent company has deliberately prevented the petitioner from even having access to the work place, leave alone allowing him to discharge his duties. Having issued legal notice and having followed it up with other representations, the petitioner had been left with no other alternative than approaching the first respondent Labour Court invoking Section 2-A of the Industrial Disputes Act, 1947 ('the Act' for brevity) since the entire conduct of the second respondent company amounted to termination of the services of the petitioner, at least orally. The learned Senior Counsel has laid stress on the fact that there was an oral termination and even the first respondent Labour Court has made an observation to the effect that one of the officers of the second respondent company informed the petitioner that his services were orally terminated. The learned Senior Counsel has also laid stress on the aspect that termination of the services of the petitioner can be gathered from the conduct of the second respondent company and it

need not always be in express terms or by way of written communication. Thus, it is the singular contention of the learned Senior Counsel for the petitioner that the first respondent Labour Court ought to have taken the totality of the circumstances into account and further ought to have treated the prevention of the petitioner's entry into the very work place as nothing but termination of his services orally. According to the learned Senior Counsel, the first respondent Labour Court has failed to discharge or exercise jurisdiction vested in it under Section 11-A of the Act and thus, it has resulted in perversity of judicial findings, which are required to be set aside.

The learned counsel for the petitioner, without conceding on the aspect of oral termination, has, in the alternative, submitted that for whatever reasons if this Court has to come to the conclusion concurring with the findings of the first respondent Labour Court that the petitioner approached the Labour Court prematurely without there being any termination of his services, it may bear in mind that the raised the industrial dispute bona fide, though prematurely. Not to shut out the options of the petitioner on the issue of limitation, this Court, urges the learned Senior Counsel, may provide the necessary leverage to the petitioner in terms of section 14 of the Limitation Act, to approach proper forum, to wit, the Tribunal, assailing the said order of termination which came to be passed subsequently on 10.11.2006, *lis pendence*.

Per contra, Sri C.R.Sridharan, the learned counsel appearing for the second respondent company, has vehemently opposed the very request of the petitioner that his case should be viewed leniently, in the event of non-suiting him, so that he could have his cause of action preserved. Expatiating further, the learned counsel has submitted that in a judicial review, the scope of which, as is well known, severely restricted, this Court cannot go beyond the scope of the writ and issue directions *ex hypothesi*.

Adverting to the merits of the matter, the learned counsel has submitted that though the petitioner was made aware of the fact that there was no termination, after raising the industrial dispute, he was served with various notices including the charge sheet, thus, providing him with an opportunity to defend himself in the departmental enquiry, which was initiated based on the misconduct of the petitioner in absenting himself from duties for a long spells of period without leave. Despite the same, the petitioner has deliberately persisted with prosecuting a false case, leaving the Tribunal with no other option than coming to the justi conclusion, as it did.

The learned counsel for the second respondent company has further brought to the notice of this Court that, having due regard to the award passed by the Tribunal, even at least in 2006, when the order of termination was duly passed by the second respondent company, instead of approaching this Court by filing the present writ petition, the petitioner could have raised an industrial dispute based on the fresh cause of action. Thus, the petitioner cannot, according to the learned counsel, take advantage of his own laches and blame the second respondent company repeatedly for persisting with a non-existing cause. The learned counsel, in this regard, has placed reliance on the judgments of the Apex Court in **Rajasthan S.R.T. Corpn. vs. Krishna Kant**[1] and **Bharat Heavy Electricals Ltd., vs. Anil**[2].

Heard Sri P.Sri Raghuram, the learned Senior Counsel for the petitioner and Sri C.R.Sridharan, the learned counsel for the second respondent company, apart from perusing the record.

The facts are not, indeed, much in controversy. It is to be observed that the Tribunal returned a nil award dated 01.09.2005 in I.D.No.128 of 2002, essentially based on the finding of fact whether there was termination of services of the petitioner by the time he had

raised the industrial dispute. In fact, on appreciating the rival contentions, as well as the material placed on record, the Tribunal has come to the conclusion that there was no actual termination in terms of Section 2-A of the Act, and as such, the petitioner's invocation of Section 2-A of the Act is premature. The petitioner did take a plea that his services were orally terminated, to which effect he was stated to have been informed by one of the superior officers of the second respondent company. The Tribunal, however, after appreciating the whole issue, has rendered a finding that there was no termination *per se.*

The petitioner, as it can be seen, during the pendency of the writ petition, filed an additional affidavit before this Court pleading justification in his initially approaching the Tribunal and subsequently approaching this Court assailing the award of the first respondent Labour Court. Nevertheless, at this stage, having regard to the categorical finding on the part of the Tribunal that there was no cause of action for the petitioner to approach it, I am afraid, this Court cannot re-adjudicate the whole issue by re-appreciating the evidence, much less on a pure question of fact as to the supposed termination of service.

Be that as it may, there is force in the contention of the learned counsel for the petitioner that the petitioner genuinely took the plea of oral termination and there were certain observations on the said aspect by the Tribunal, which tentatively held that the prosecution of the proceedings by the petitioner is somewhat *bona fide* though it eventually turned out that he was chasing a shadow rather than the substance.

The petitioner has eventually sought leave of this Court to approach the first respondent once again questioning the order of termination, dt.10.11.2006, passed by the second respondent. There is

enormous delay in this regard.

It pays to remember, the incorporation of Fundamental Rights in Part III of the Constitution is not a conferment, but only an enumerative recognition or acknowledgement of inalienable rights, which are inherent in mankind. Section 151 of Code of Civil Procedure does not confer inherent rights on the Civil Court, but only recognises what are otherwise inherent in the adjudicatory forum in Common Law terms. So is the case with Section 482 of Criminal Procedure Code. *A fortiori*, a Constitutional Court has plenary powers to prevent miscarriage of justice or to correct grave errors. It thus inheres in this Court to issue suitable directions in a *lis* or to mould a relief ex debito justitiae. Stricto jure, section 14 of Limitation Act, 1963 may not have any application to the facts of the case. But, at the same time, it cannot be said that under these circumstances, the Court has to close its eyes to the plight of a workman, while technicalities terminate his remedy, for the management has already terminated his service. This course of adjudication may amount to more law and less justice. This Court, indeed, is sworn to the cause of justice, of course, in accordance with law.

In the above facts and circumstances, the present writ petition is disposed of, giving liberty to the petitioner to approach, as he has pleaded, the Labour Court/Industrial Tribunal, laying challenge against the order termination, dt.10.11.2006, passed by the second respondent. Without usurping the discretion of the Tribunal, it is observed that in the event of the petitioner's approaching it, the Tribunal may take a liberal and lenient view in entertaining what is seemingly a belated claim of the petitioner. I also hasten to add that the second respondent company is equally at liberty to raise all the factual and legal issues to counter the contentions of the petitioner including that of the limitation aspect with full vigour. In the light of the disposal of the case giving liberty to the petitioner to approach the

proper *forum*, it may not be necessary to elucidate on the decisions relied on by the leaned counsel for the second respondent company.

With the above observations and liberty, the Writ Petition stands disposed of. There shall be no order as to costs. As a sequel, the miscellaneous petitions, if any, pending in this writ petition, stands disposed of as infructuous.

(DAMA SESHADRI NAIDU, J)

16th December, 2013
GHN

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[1] AIR 1995 SC 1715
[2] (2007) 1 SCC 610